IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5206 OF 1994

Shri Ramashabd Lalbihari Yadav .. Petitioner.

Vs

Shri Purushottam Kishanlal Holani, .. Respondent

Mr M.R.Katikar, for the petitioner.

None for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 28.11.2005.

PC:

1. Heard the learned counsel for the petitioner. None appears for the respondent.

2. This petition is directed against the judgment and order dated 23.11.94 passed by VI Addl.District Judge, Thane in Misc. Civil Appeal No.185 of 1994, allowing the appeal filed by the respondent-defendant and setting aside the judgment and order dated 17.6.1994 passed below Exhibit-5 application in Regular Civil Suit No.114 of 1994 filed by the petitioner. By order dated 17.6.94 the exparte order of temporary injunction granted on 2.3.1994 was confirmed by the trial Court.

3. This Court, while issuing rule on the writ petition on 28.6.1995, had passed the following order:

> "Heard both sides. Rule. Interim order in terms of prayer "B" of Civil Application on the following conditions:
>
> 1. The petitioner to deposit Rs.60 thousand in this Court within two months from today.
>
> 2. The respondent shall be at liberty to withdraw the amount deposited.
>
> 3. In case of failure on the part of the petitioner to comply with the condition no.1, Interim order to stand vacated automatically."

The record shows that the amount as per the aforesaid condition (1) was deposited by the petitioner and was also withdrawn by the respondent as per condition no.(2). It is thus clear that the interim order in terms of prayer clause (B) of the civil application stood confirmed. Prayer (B) of the civil application reads thus;

> "(B) "Pending hearing and final disposal of the Regular Civil Suit no.114 of 1994 pending on the file of Jt.Civil Judge, Jr Dn., Kalyan the respondent/defendant his agents, servants and representatives be restrained by an order and injunction of this Hon'ble Court from dispossessing the petitioner forcibly and without due process of law from suit flat no.18, 4th floor, Balaram Smruti, Patharli Road, Gograswadi Dombivli (W), Tal.Kalyan, Dist.Thane."

Mr Katikar, learned counsel appearing for the petitioner, has no instructions as to whether the suit

is disposed of or not. Keeping that in view and considering the order dated 28.6.1995 and the compliance made by the petitioner and the respondents of the conditions mentioned therein, I am satisfied that this petition can be disposed of by the following order.

(a) The interim order passed by this Court in terms of prayer clause (B) shall remain operative till the disposal of Regular Civil Suit No.114 of 94, if still pending for disposal.

(b) The trial Court shall decide Regular Civil Suit No.114 of 1994, if not disposed of already, as expeditiously as possible and preferably within a period of one year from the date of receipt of this order,

(c) ® Needless to express that insofar as the conditions mentioned in the order dated 28.6.1995 and the compliance thereof is concerned, the same shall be subject to final outcome of the suit.

(d) The trial Court shall decide the suit on merits in accordance with law and uninfluenced by the observations made in the orders by the Court below while disposing of Exhibit-5 application.

(d) Rule is accordingly disposed of.

(D.B.Bhosale,J.)